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No. - .

Supreme Court, U.S.
FILED
NOV 30 1984
ALEXANDER L. STEVAS
CLERK

In the
Supreme Court of the United States.

October Term, 1984

ROMOLO E. CAPOBIANCO, ET AL.,
Petitioner,

v.

RICHARD HOWE, ET AL.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

On Appeal from Docket No. CA 83-1784 in the United States Court of Appeals for the First Circuit.

Romolo E. Capobianco, Pro Se
and Romolo E. Capobianco as President
Romolo E. Capobianco, Inc., Pro Se
29 Andover Road
Billerica, MA 01821
(617) 667-4872

APPEALS PRINTERS BOSTON, MASSACHUSETTS

39 pp

List of Named Parties.

1. Romolo E. Capobianco, 29 Andover Road, Billerica, MA 01821

2. Romolo E. Capobianco, Inc., 29 Andover Road, Billerica, MA 01821

3. Richard Howe, 10 Kearney Sq., Lowell, MA 01852

4. Joseph Princi, 27 School St., Boston, MA 02108

5. James Dangora, 459 Boston Rd., Box 416, Billerica, MA 01821

6. Judges of Middlesex Superior Court, 40 Thorndike St., Cambridge, MA 02141

List of Unnamed Interested Parties.

1. William and Donna Connolly, 12 Gloria Ave., Tyngsboro, MA 01879

Questions Presented for Review by the Court.

1. Can Civil and/or Constitutional rights be abridged and/or denied as a result of actions or lack of actions and/or failure or negligence to properly perform by attorneys, the Board of Bar Overseers and/or the Courts?

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No. - .

In the

Supreme Court of the United States.

October Term, 1984

ROMOLO E. CAPOBIANCO, ET AL.,
Petitioner,

v.

RICHARD HOWE, ET AL.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

Petitioner, Romolo E. Capobianco, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered on June 7, 1984 and Petition for Rehearing denied on July 31, 1984.

Summary of Opinions.

Docket No. 79 4698, Middlesex Superior Court, Commonwealth of Massachusetts
Judgment found against Capobianco, May 27, 1981 Howe, Attorney for Capobianco, agrees to dismiss appeal without Capobianco consent or knowledge, December 15, 1981
Contempt judgment against Capobianco, November 5, 1982
Howe withdraws, December 28, 1982

Docket No. 82-1405, Massachusetts Appeals court
Appeal dismissed and on November 23, 1983 petition for reconsideration of order of dismissal denied

Jurisdiction.

Docket No. 82-3398-T, United States District Court, Boston, Massachusetts
Order dismissing case, August 22, 1983
Affirmed per order, October 13, 1983

Docket No. 83-1784, United States Court of Appeals
Decision affirming dismissal, June 7, 1984
Petition for rehearing denied, July 31, 1984

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

42 U.S.C., Sections 1983, 1984 and 1986
18 U.S.C., Sections 241 and 242

Statement of the Case.

On Sept. 6, 1979, William Connolly et al filed a complaint against Romolo E. Capobianco, Inc. et al in Middlesex superior Court, commonwealth of Massachusetts, docket no. 79 4698. The suit was to compel performance of a purchase option clause in a lease. Counsels were: Richard P. Howe for the Connolly's and Joseph M. Princi for Capobianco. Presiding Judge was William Sullivan.

Judge Sullivan should have disqualified himself from hearing the case because prior to his appointment he was employed as counsel for the City of Lowell Housing Authority which in turn reported to the City Council. At the time of Judge Sullivan's employment, Attorney Howe was a member of said City Council and as a member of said Council, Judge Sullivan's employer. Massachusetts Rules of Court, Rule 3:09, Canon 3B(1) states that "a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Because of his prior relationship with Attorney Howe, his impartiality could reasonably have been questioned.

On May 27, 1981 Judge Sullivan found for Connolly and Judge Good signed an order for specific performance. Appeal docketed June 11, 1981. Without the consent of Mr. Capobianco and without his knowledge, on December 15, 1981 Attorney Princi filed an agreement to dismiss appeal. On November 5, 1982 Judge Fitzsimmons found Capobianco in contempt for not complying with specific performance. Mr. Capobianco appealed on November 9, 1982 and notices of appeal were sent to Attorneys Howe and Princi and Judge Fitzsimmons. On December 28, 1982 Attorney Princi withdrew.

Mr. Capobianco believes that Attorneys Princi and Howe and Judge Sullivan conspired and/or colluded to fraudulently deprive him of property rights by awarding the house to Mr. Connolly in the original judgement and by withdrawing appeal without his knowledge or consent deprived and denied constitutional property rights. The withdrawal of appeal was not in Capobiancco's best interest and was not standard legal practice. Rarely is appeal withdrawn without settlement. Given that there was no settlement,

Attorney Princi's action was unethical, without basis or good cause, and unable to stand the test of reasonable exercise of professional judgment and conduct. In addition, Attorney Princi was negligent in that he never pointed out to the court that the Connolly's never signed the lease, that the Connolly's were always behind in their rent and that the contract was invalid because consideration was not tendered on both sides. Attorney Princi's failure to bring this to the attention of the court was gross negligence at the least. Attorney Princi therefore violated the following Canons under Rule 3:07, Massachusetts Rules of Court: DR 7-101 which states that an "attorney shall not intentionally prejudice or damage his client during the course of the professional relationship" and DR 6-102 stating that a "lawyer shall not handle a legal matter without preparation adequate in the circumstances and shall not neglect a legal matter entrusted to him."

A complaint procedure has been established by the Massachusetts Rules of Court. However, under Rule 4:01, § 4 Types of Discipline, the "Discipline of attorneys may be (a) by disbarment, suspension, or public censure by this court; (b) by private reprimand by the Board; or (c) by informal admonition by the Bar Counsel. The organization responsible for discipline is the "Board of Bar Overseers". In addition resignation is permitted under Rule 4:01 § 15. No provision has been made for recovery of financial losses and damage done to clients. Recovery of these damages was a primary reason for filing suit in Federal Court. The lack of monetary recovery allows lawyers to act with almost total impunity knowing that they cannot be held monetarily liable except in the case of criminal actions by themselves. Applying to the Board of Bar Overseers for disciplinary action is almost an exercise in futility. The 1982 American Bar Association report found that under one percent of all complaints about attorneys were resolved through disbarment or voluntary resignation. The record in Massachusetts is significantly under that of the national average noted by the American Bar Association. This leniency and desire to protect the profession above all else has engendered an environment where attorneys know they can act almost at will and have little fear of disciplinary action of any consequence. Every other profession that is licensed by the Commonwealth of Massachusetts has

complaints and disciplinary actions handled by the Investigations Department of the Registration Division of the Commonwealth of Massachusetts. Only the legal profession is not subject to public scrutiny and answerable to the people of the people's representatives in the Commonwealth's Registration Division. The Registration Division is a branch of the Office of Consumer Affairs and consequently has a concern of protecting the individual, whether that be the complainant or the subject of the investigation. At a minimum, investigations of complaints about attorneys should be subject to the same procedure and scrutiny as every other profession.

The question asked here is "should attorneys be considered to be acting under color or authority of state law or the state?" since they are licensed to practice by the state, the rules of court and conduct are promulgated by the judiciary branch of the state government and their actions and ethics are set forth in state law. If so, they can be considered to be subject to and covered under §1983.

Appeal was taken to the Massachusetts Appeals Court, Docket 82-1405. The appeal was dismissed and petition for reconsideration was denied. Despite demanding trial by jury, Capobianco was denied this right. At this point, suit was filed in Federal District Court in Boston, Massachusetts against repspondents to recover for damages and denial of rights which occurred as a result of their actions. Again, jury trial was demanded (docket no. 82-3398-T) but denied as case was dismissed. On appeal to the United States Court of Appeals for the First Circuit, jury trial was requested so this issue could be heard by a jury of peers rather than dismissed without a hearing as requested.

Capobianco, petitioner, was denied Fourteenth Amendment right to jury trial throughout all proceedings except where waived for 79-4698 on November 6, 1980 and then only for that first hearing. Jury trial was not waived for any subsequent proceeding and was demanded in all courts afterwards. This brings up the question of whether, by withdrawal of appeal without the knowledge or consent of Capobianco, the Fourteenth Ammendment rights of due (equal) process of Capobianco were abridged and/or denied.

Reason for Granting the Writ.

Capobianco is pressing this case because suit was filed in Federal Court for recovery of monetary damages and to establish that civil and constitutional rights can be denied and/or abridged as a direct and/or proximate result of actions taken by attorneys in the performance of their professional duty, whether properly or improperly performed.

Action in Federal court has been dismissed for various reasons which in summary have the effect of saying that attorneys cannot be held responsible for the results of their actions, even when they improperly represent their clients. Also, it appears that judicial immunity is absolute. However, in this case, it appears that a decision was rendered and evidence not heard because of a prior employment relationship between the judge and opposition attorney which tended to favor the opposition attorney. Capobianco had demanded trial by jury on all issues, yet by dismissing the case, his right to be heard and have a trial by jury of peers was denied.

Capobianco wishes to establish a precedent not found in any cases to date with this appeal. Having been denied a trial, no recourse remains but to appeal to the fairness and wisdom of this Honorable Court to review the issue presented and determine to what extend members of the Bar can be held monetarily and otherwise accountable to their clients and to the public at large for unethical and/or improper and/or damaging conduct which has the effect of causing loss, deprivation or denial of rights. Capobianco, proceeding Pro Se without the benefit of legal training, is presenting the issues and dilemmas with which he has been faced in simple language, but prays, because this is the Court of Last Resort, that the Honorable Justices can determine the validity and fairness of his claims and look beyond his simple plea to determine this issue of overriding importance. Capobianco, having been damaged by the legal system, prays to have his faith restored.

In addition to an inability to fully trust attorneys to this point, he has been financially unable to engage counsel to proceed to this level and therefore has carried this to this Honorable Court on his own. Besides the issue presented, he suggests that the Court find a way to provide assistance to those unable to proceed In Forma Pauperis but not wealthy enough to proceed without assistance.

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U.S. District Court Docket

Aug. 8, 1983 #13 Plaintiff's Motion to extend time

Aug. 22, 1983 #14 Order

Aug. 23, 1983 #14 Ref. #13 Motion denied.

United States Supreme Court

Romolo E. Capobianco et al.,
Appellants

v.

Richard Howe et al.,
Appellees

RECEIVED
SEP 24 1984
Office of the Clerk,
Supreme Court, U.S.
(stamp)

On appeal from the United States Court of Appeals
for the First Circuit

Application for Extension of Time

Romolo E. Capobianco, Appellant, hereby moves this honorable Court to extend the time for filing a Brief, Appendix and Petition for Writ of Certiorari for the following reasons for a period of thirty (30) days:

Printer is unable to produce typographically all the documents required for the writ within the allowed period.

Appellant did not receive the rules of procedure and interpret them in time for timely filing. Appellant is filing Pro Se without benefit of Counsel and must conduct his normal business in addition to preparing for this case.

(signed)

Romolo E. Capobianco,
Pro Se and as President
Romolo E. Capobianco, Inc.
(Pro Se)
29 Andover Road
Billerica, MA 01821
(617) 667-4872

September 19, 1984

Romolo E. Capobianco, Inc.
29 Andover Road
Billerica, MA 01821

September 29, 1984

Office of the Clerk
U.S. Supreme Court
Washington, D.C. 20543

Gentlemen:

Per your letter of September 25, 1984, further information is required under Rules 20.6 and 29.2. We are herewith submitting a copy of your letter, the original application for extension of time and the other information requested, namely

Decision of U.S. Court of Appeals for the First Circuit CA 83-1784
Denial of Petition for Rehearing by the same court in CA 83-1784
Grounds on which jurisdiction of the Court is invoked.

Grounds on which jurisdiction is invoked include:
42 U.S.C., Sections 1983, 1984 and 1986
18 U.S.C., Sections 241 and 242

(signed)
Romolo E. Capobianco, Pro Se
29 Andover road
Billerica, MA 01821

RE: Capobianco et al V. Howe et al, 1st Circuit Appeals #83-1784

Supreme Court of the United States

No. A-240

Romolo E. Capobianco, et al.,
Petitioners,

v.

Richard Howe, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s), It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 28, 1984.

(signed)
Associate Justice of the Supreme
Court of the United States

Dated this 5th
day of October, 1984

Certificate of Service.

I, Romolo E. Capobianco, do hereby certify that I have served via first class mail, postage prepaid, a copy of APPLICATION FOR EXTENSION OF TIME

to: Clerk, U.S. Court of Appeals, First Circuit

Raymond J. Kenney Jr. Martin, Magnuson, McCarthy & Kenney
73 Tremont St.
Boston, MA 02108

Kevin T. Creedon Morrison, Mahoney & Miller
55 Court St.
Boston, MA 02108

(signed)
Romolo E. Capobianco,
29 Andover Rd.
September 19, 1984 Billerica, MA 01821

On appeal from 83-1784

United States Court of Appeals
for the First Circuit

No. 83-1784.

Romolo E. Capobianco, et al.,
Plaintiffs, Appellants,

v.

Richard Howe, et al.,
Defendants, Appellees.

Before
Campbell, Chief Judge,
Coffin and Breyer, Circuit Judges.

Order of Court

Entered: July 31, 1984

The petition for rehearing is denied.

By the Court:

(stamped)

Clerk.

(cc: Messrs: Capobianco, Kenney and Ms. Kelley)

United States District Court
District of Massachusetts

Romolo E. Capobianco, et al.
Plaintiffs,

v.

Richard Howe, et al.
Defendants.

CA 82-3398-T

Order

TAURO, D.J. October 13, 1983

On August 22, 1983, the Magistrate issued a recommendation that the defendants' motions to dismiss be allowed and that the complaint be dismissed. After reviewing the Magistrate's report and recommendation, the objections thereto, and the record in this case, the court has decided to adopt the Magistrate's report and recomendation.[1]

It is so ORDERED.

(signed)
United States District Judge

1. In addition to the Magistrate's discussion, it is worthy of note that the § 1983 action against the attorneys must fail because participation in a state court proceeding does not make the attorneys' actions "under color of state law." See Diffenback v. Buckley, 464 F. Supp. 670 (D.N.H. 1979).

United States Court of Appeals
for the First Circuit

No. 83-1784.

Romolo E. Capobianco, et al.,
Plaintiffs, Appellants,

v.

Richard Howe, et al.,
Defendants, Appellees.

Appeal from the United States District Court
For the District of Massachusetts

(Hon. Joseph L. Tauro, U.S. District Judge)

Before
Campbell, Chief Judge,
Coffin and Breyer, Circuit Judges.

Romolo E. Capobianco on brief, pro se.
Jean M. Kelley, Kevin T. Creedon, and Morrison, Mahoney & Miller on brief for Richard Howe.

Raymond J. Kenney, Jr., and Martin, Magnuson, McCarthy & Kenney on brief for appellees James Dangora and James Princi.

June 7, 1984

Per Curiam. This appeal is taken from the district court's dismissal of appellant's complaint for failure to state a claim upon which relief could be granted.

The complaint describes appellant's version of a real estate transaction and subsequent state court proceedings. It names two attorneys and unnamed state court judges as defendants.

As to one attorney, the complaint mentions him only in the caption. As to the other attorney it alleges that he filed an appeal in state court on appellant's behalf and later withdrew it without appellant's consent.[1] As to one state judge, the complaint alleges that he required appellant to surrender certain real estate or face contempt of court sanctions and that he did so with knowledge of the dilemma appellant faced and that he denied appellant a continuance and the right to counsel.

Though the complaint does not specifically describe the basis for federal jurisdiction, we assume that it was brought under 42 U.S.C. § 1983. As such it was properly dismissed.

The conduct of the attorneys cannot be described as "state action" and the conduct of the judge does not amount to a deprivation of federally protected rights.

---

1. The complaint was later amended to include a third attorney but the only allegation found in the district court record as to him is a claim that he conspired with the other lawyers to commit fraud. No state action is claimed.

Threatening a party with contempt sanctions for failure to abide by an order of the court is neither illegal nor a deprivation of federal rights. The denial of a continuance and counsel, if improper, were wrongs that could be remedied by an appeal in state court. 42 U.S.C. § 1983 was not intended to provide a federal review of state court actions. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The fact that the pursiut of appellate remedies would have placed appellant in a difficult personal dilemma does not constitute a deprivation of federal rights.

In addition, the sole specific relief requested is a "reprimand" against the defendants. There is no statuatory basis for such relief and without such authority the district court could not grant it. Monetary damages would not be available against the judge. See Stump v. Sparkman. ____ U.S. ____ (19). Injunctive relief would be unavailing since the state proceedings had long-since concluded. Declaratory relief would involve voiding the state court action and would thus run afoul of Rooker.

We agree with the district court that there was no basis for relief and thus affirm its judgment.

Petition for Reconsideration of Order of Dismissal

Commonwealth of Massachusetts
Appeals Court
William Connolly & another,
Plaintiffs
vs.
Romolo E. Capobianco, Inc.
& another,
Defendants.

No. 82-1405
Petition For
Reconsideration of
Order of Dismissal

Petition is hereby made for reconsideration of the order of dismissal entered in this case October 31, 1983. This petition is made for the following reasons.

1. Defendant had no opportunity to argue;
2. Plaintiffs never signed a lease and had no rights to exercise an option to purchase;
3. No consideration was ever paid to the defendants; and
4. A conflict of interest existed between Attorney Richard Howe and Judge William H. Sullivan.

(signed)
Romolo E. Capobianco, Inc.
Romolo E. Capobianco, Pres.

(signed)
Romolo E. Capobianco, Per Se

(stamp)
REC'D NOV 22 1983

(stamp)
RECEIVED NOV 28 1983

DATED: November 18, 1983

Appeals Court
(Denied)

By the Court,
Date: Nov. 23, 1983
Susan Miller
Assistant Clerk

(stamp)

Appeals Court
Single Justice

Filed 11-22-83

John E. Powers,
Clerk

(stamp)

Notice of Appeal

United States District Court
for the District of Massachusetts

Civil Action No.
82-3398-T

Romolo E. Capobianco, Inc.
and Romolo E. Capobianco, both
of Billerica, Massachusetts
Plaintiffs

Notice of Appeal

v.

Judges of State Courts,
Attorney Joseph Princi and
Attorney James Dangora, Jr.,
and Attorney Richard Howe of
Lowell, Massachusetts
Defendants

Notice is hereby given that Romolo E. Capobianco, Inc. and Romolo Capobianco the above named hereby appeal (from the order 82-3398-T dated August 22, 1983 describing it) entered in this action.

August 25, 1983

(signed)
Romolo E. Capobianco, Inc.,
Romolo E. Capobianco, President

(signed)
Romolo E. Capobianco

RE: William Sullivan
RE: Justice Fitzgibbons

United States District Court
District of Massachusetts

Romolo E. Capobianco, Inc.
and Romolo E. Capobianco, both
of Billerica, Massachusetts
Plaintiffs

v.

Civil Action No.
82-3398-T

Judges of State Courts,
Attorney Joseph Princi and
Attorney James Dangora, Jr.
and Attorney Richard Howe of
Lowell, Massachusetts
Defendants

Order
on
Plaintiff's Motion for Appointment of Counsel
and
Motion for Attachment of Property
and
Findings and Recommendations on
Defendants' Motions to Dismiss

August 22, 1983

Alexander, M.

Plaintiff's complaint, filed November 8, 1982, asserts claims against the judges of the state court, and against attorneys Joseph Princi, James Dangora and Richard Howe. Plaintiff's claims arise from his dissatisfaction with the result of a civil lawsuit involving the sale of property. After review of the pleadings and memoranda filed, this Court recommends that the Motions to Dismiss be allowed.

It is well settled that judicial officers enjoy absolute immunity from suit. Sullivan v. Kelleher, 405 F.2d 486 (1st Cir. 1968). Furthermore, plaintiff's complaint does not allege the deprivation of a constitutionally protected right or interest which would serve as the basis for a claim under federal law. Plaintiff's statements of dissatisfaction with the results of the sale of his property, and his dissatisfaction with his attorney do not assert a cause of action upon which this Court can entertain jurisdiction. See, Downing v. Arnold, 461 F. Supp. 54 (D. N.H. 1978).

In that this Court recommends that the complaint be dismissed, plaintiff's Motions for Attachment of Property, and for Appointment of Counsel are denied.

(signed)

United States Magistrate

Either party may file written objections to these findings and recommendations within ten days of receipt. Failure to file within ten days shall result in waiver of appeal. See Part Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

United States Court of Appeal
for the First Circuit

Romolo E. Capobianco, et. al.,
Plaintiffs, Appellants

V.

Richard Howe, et. al.,
Defendants, Appellees

Appeal No. 83-1784

Romolo E. Capobianco &
Romolo E. Capobianco, Inc.
both of
29 Andover Road
Billerica, MA 01821
(617) 667-4872

Dated: December 30, 1983

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Page 4 – 8	Summary of Facts

This case was originally dismissed by the Court claiming that there was no basis for Federal jurisdiction. Federal jurisdiction does apply because the civil rights of the Plaintiff, Appellant were denied. This denial was a direct result of the Defendants, Appellees acting individually and/or together in conspiracy. The denial of the rights of the Plaintiff are covered under one or more of the following:

1. Title 42, U.S.C., Section 1983, 1985 and/or 1986
2. Title 18, U.S.C., Sections 241 and/or 242

The deprivation of property rights without notice and opportunity to be further heard was decided in Lynch V. Household Finance Corp., 405 U.S. 538 (1972).

Action has been brought and appealed for the following reasons:

1. Originally action was brought against me for enforcement of a purchase option provision contained in a lease contract which was neither legal, valid, binding nor enforceable because said lease contract was not signed and agreed to by both parties.
2. During the course of this action, my former attorney, contrary to my desires and instructions, and without notice to me, and without informing me verbally, in writing, or in any other manner had withdrawn my appeal.
3. Subsequently the Sheriff's Department forcibly took me to Court. The Court forced me to turn over my property under the aforementioned unenforceable contract without allowing me to state that title was being conveyed under protest or under extreme duress. The extreme duress consisted of the threat of immediate jailure for noncompliance. I was allowed neither to have an attorney present nor a continuance. This threat occured at the time my wife was hospitalized in a mental institution as a result of her involvement in the litigation. Our three children were in my sole care.
4. Through the actions of my former counsel and the Court, individually and/or in conspiracy, I was deprived of my rights of representation, liberty, and property.
5. The threat of immediate jailure is a cruel and unusual punishment in a civil action related to a real estate transaction.

The chronological sequence of the events leading to this appeal are:

A. Mr. William Connolly and his wife Donna in August of 1977 rented a house I owned at Lot #8, Gloria Avenue, Town of Tyngsboro, Commonwealth of Massachusetts.

B. A lease agreement containing a purchase option valid for one year was sent to the Connolly's for signature. The lease agreement was never signed by the Connolly's and was never returned by them to my office.

C. Not having received a signed lease contract, I considered the Connolly's to be tenants at will as they were already residing at the property. As tenants at will they had all the responsibilities specified by the Commonwealth of Massachusetts and Town of Tyngsboro in said Commonwealth. The Connolly's also had all the rights and privileges granted to tenants at will by the Commonwealth of Massachusetts and the Town of Tyngsboro in said Commonwealth. At no time did I grant the Connolly's any privileges or rights over and above those specified by the Commonwealth of Massachusetts and the Town of Tyngsboro. In the absence of a lease, a purchase option is not one of the rights and/or privileges granted tenants at will by either the Commonwealth of Massachusetts or the Town of Tyngsboro.

D. I considered the lease agreement and the purchase option to be null and void as neither was signed or agreed to by the Connolly's. The purchase option could not be valid as the lease contract was never signed by the Connolly's.

E. After one year of occupancy the Connolly's rent was three months in arrears. They did not come forward at that time and I decided to commence eviction proceedings.

F. At the end of eighteen months the Connolly's had not yet quit the property. They came forward at that time expressing a desire to purchase the property. They wished to purchase the property under the terms of the purchase option clause included in the original lease contract that they had never signed nor agreed to.

G. I refused to sell under the original terms, but, in order to avoid the expense of continuing litigation, agreed to sell under revised terms. These terms were that an updated appraisal be made and that the sales price be determined in accordance with such updated appraisal.

H. The Connolly's refused to have an updated appraisal performed and brought action against me to sell under the terms of the purchase option clause contained in the original lease contract submitted to them but never signed by them nor returned to my office.

I. The Court found in the Connolly's favor. I instructed my attorney at the time, Mr. Princi, to appeal. He filed an appeal and an appeal was in effect.

J. The Connolly's filed for contempt. I went forward and requested either a continuance or to have an attorney present. Both requests were denied.

K. A bench warrant was issued. On November 5, 1982 I was forcibly taken to Court in the City of Cambridge, County of Middlesex, Commonwealth of Massachusetts by the Sheriff's Department of said County.

L. Judge Fitzgibbon ordered me to sign the deed to the property and transfer title to the Connolly's. Failure to do this would result in immediate jailure for a period of 10 days.

M. I protested that an appeal was on file and that a continuance should be allowed based on the appeal. I was informed that my attorney had withdrawn my appeal. No continuance was granted.

N. I further requested that I be allowed to have an attorney present as my liberty was in jeopardy. This request was denied.

O. I desired to state that my signature on the deed would be appearing under protest or extreme duress. Again I was not allowed to so state.

P. My wife had become entangled with this litigation. Because of her involvement, she was at the time hospitalized in a mental institution. In her absence I was left to support and care for my three children. As there would be no means of care or support for my children were I to be jailed, the pressure was greatly intensified. This atmosphere of extreme tension and duress rendered me incapable of acting as a normal, reasonable, prudent man.

Q. It was only at that point that I signed the deed. The Court did not order the Connolly's to pay me a penny and I never saw any cash from this transaction.

R. The costs to be from these actions included:

1. Loss of rental income
2. Loss of appreciation in value of property
3. Loss of interest income from profits and cash flow
4. Loss of alternative investment opportunities
5. Legal expenses
6. Medical expenses
7. Impairment of my wife's ability to cope
8. Loss of my wife's companionship
9. Loss of my wife's homemaking services
10. Loss of my wife's child rearing services
11. Continuing loss of my wife's services to the business

Certiticate of Service

I, Romolo E. Capobianco, filing Pro Se, in the above entitled action, do hereby certify that I have, this date, served a copy of the above brief in support of Plaintiff, Appellant's appeal, Appeal No. 83-1784.

to the following:

Jean M. Kelley
Morrison, Mahoney & Miller
Attorneys for Richard Howe
55 Court St.
Boston, MA 02108

Raymond J. Kenney, Jr.
Attorney for Joseph Princi & James Dangora, Jr.
73 Tremont St.
Boston, MA 02108

Judges of State Court
% Clerk's Office
Middlesex County Superior Court
40 Thorndike St.
Cambridge, MA 02141

(signed)
Romolo E. Capobianco

Dated: December 30, 1983

Office-Supreme Court, U.S.
FILED
JAN 21 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-986

In the Supreme Court of the United States

OCTOBER TERM, 1984

ROMOLO E. CAPOBIANCO, ET AL.,
PETITIONER,

v.

RICHARD HOWE, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT, RICHARD HOWE'S BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

PHILLIP M. DAVIS*
JEAN M. KELLEY
KEVIN T. CREEDON
MORRISON, MAHONEY & MILLER
55 Court Street
Boston, MA 02108
(617) 523-7580
Attorneys for Richard Howe

* Attorney of Record

Blanchard Press, Inc., Boston, Mass. — Law Printers [617] 426-6690

Questions Presented

1. Does a private attorney act under color of state law within the meaning of 42 U.S.C. § 1983 where he is engaged in a civil action in a state court?

2. Does a claim of dissatisfaction with the outcome of a state court civil action state a cause of action cognizable in federal court under 42 U.S.C. § 1983?

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In the
Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-986

ROMOLO E. CAPOBIANCO, ET AL.,
PETITIONERS,

v.

RICHARD HOWE, ET AL.,
RESPONDENTS.

RESPONDENT, RICHARD HOWE'S BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Opinions of Courts Below

Romolo E. Capobianco, et al. v. *Richard Howe, et al.*, United States District Court of the District of Massachusetts, C.A. No. 82-3398-T (October 13, 1983) (unreported).

Romolo E. Capobianco, et al. v. *Richard Howe, et al.*, United States Court of Appeals for the First Circuit, No. 83-1784 (Per Curiam) (June 7, 1984) (unreported).

Jurisdictional Grounds

The petitioners, Romolo E. Capobianco, et al. ("petitioner"), have petitioned this Court for a Writ of Certiorari to the United States Court of Appeals for the First Circuit to review the decision of that court in the case of *Romolo E. Capobianco, et al.* v. *Richard Howe, et al.*, No. 83-1784, opinion dated June 7, 1984. By order dated July 31, 1984, the First Circuit Court of Appeals denied the petitioner's request for a rehearing. (Appendix to Brief in Opposition to Petition for a Writ of Certiorari ["App."] A-13). On October 5, 1984, Associate Justice William Brennan signed an order extending the petitioner's time in which to file a petition for a writ of certiorari to and including November 28, 1984.

On or about November 28, 1984, the petitioner filed a petition for a writ of certiorari. However, on December 3, 1984, this Court returned the petition as a result of its non-conformance with Supreme Court Rule 33.1. This Court allowed the petitioner twenty-one (21) days in which to cure the non-conformance. On or about December 21, 1984, the petitioner filed a second petition for a writ of certiorari.

The petitioner relies upon 28 U.S.C. § 1254(1), as grounds for jurisdiction in this Court.

Relevant Statutory Provisions

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 1331:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343:

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) The District of Columbia shall be considered to be a State; and

(2) Any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Statement of the Case

The petitioner commenced this action *pro se* in November, 1982 naming as defendants, "Judges of State Courts", Attorney Joseph Princi ("Princi") and Attorney Richard Howe ("Howe"). (A-1, 4). The petitioner amended his complaint to name Attorney James Dangora as an additional defendant. (A-2).

A. *Summary of the Complaint.*

In August, 1977, the petitioner executed a lease of real property with William and Donna Connolly (hereinafter, "the Connollys"). The lease provided the Connollys an option to purchase the leased property upon the expiration of one year. (A-4). After one year had expired, the Connollys were three months in arrears in their rent and had not exercised their option to purchase the property. (A-4). Eighteen (18) months later, the Connollys informed the petitioner that they wished to purchase the property. (A-4). Represented by Howe, the Connollys commenced an action in Massachusetts Superior Court for Middlesex County alleging breach of contract. (A-5). The case resulted in a judgment for the Connollys, and Princi, the petitioner's attorney, filed an appeal on behalf of the petitioner. (A-5).

When the petitioner refused to convey the property as required under the order of specific performance, Howe, on behalf of the Connollys, moved the court to hold the petitioner in contempt. (A-5). The petitioner requested a continuance and an opportunity to be represented by counsel. (A-5). Both requests were denied by the court. (A-5). The court ordered the petitioner to tender the deed subject to the penalty of being placed in jail for refusal to do so. (A-5). The petitioner discovered that Princi had withdrawn the appeal without his knowledge. (A-5). The petitioner, under duress, signed the deed. (A-5).

In his prayer for relief, the petitioner requested that the court conduct a hearing to bring forth all the facts, to reprimand Judge Donahue (Massachusetts Superior Court, Associate Justice), Attorneys Princi, Howe, and Dangora, and for such other relief as the court deems appropriate. (A-5-6).

B. *Summary of Dismissal and Appeal.*

Howe moved the court to dismiss the action for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), and for failure to state a claim for which relief could be granted, Fed. R. Civ. P. 12(b)(6). (A-2). Dangora and Princi likewise moved to dismiss the action. (A-2). The motions were referred to United States Magistrate Alexander for a report and recommendation. (A-2). With respect to the claim asserted against the "judges of state courts", the Magistrate ruled that judicial officers enjoy absolute immunity from suit. (A-8). With respect to the claims against Princi, Dangora and Howe, the Magistrate ruled that the petitioner's claims of dissatisfaction with the results of his putative sale of property and with the conduct of his attorney in the state court litigation do not state a cause of action upon which a federal court may exercise jurisdiction. (A-8). The Magistrate recommended that the complaint be dismissed. (A-8).

The District Court, Tauro, D.J., adopted the Magistrate's recommendation, and the complaint was dismissed. (A-9).

Capobianco pursued an appeal of the judgment of the District Court, and the United States Court of Appeals for the First Circuit, in a per curiam opinion dated June 7, 1984, affirmed the judgment of dismissal. (A-10-12). The court held that "[t]he conduct of the attorneys cannot be described as 'state action' and the conduct of the judge does not amount to a deprivation of federally protected rights." (A-11). In addition, the court held that "42 U.S.C. § 1983 was not intended to provide a federal review of state court actions." (App. 11). Finally, the court held that there was no basis for monetary, injunctive or declaratory relief. (A-12). On July 31, 1984, the court denied a petition for rehearing. (A-13).

Summary of Argument

The petitioner has failed to show that there are special and important reasons for granting the petition for a writ of certiorari. The United States Court of Appeals for the First Circuit correctly held that the conduct of an attorney engaged in a civil action in state court does not constitute "state action" within the meaning of 42 U.S.C. § 1983. Furthermore, the court correctly ruled that 42 U.S.C. § 1983 does not provide a vehicle for federal review of state court civil actions.

There is no question of law at issue that justifies the grant of a writ of certiorari here.

Argument

THE PETITIONER HAS FAILED TO SHOW THAT THERE ARE SPECIAL AND IMPORTANT REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI.

A. *Introduction.*

"A review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Supreme Court Rule 17.1. *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 73-75, 75 S. Ct. 614, 616-617, 99 L. Ed. 897 (1955); *NLRB* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502, 71 S. Ct. 453, 456, 95 L. Ed. 479 (1951). Certiorari is granted only in cases involving issues of importance to the public. *NLRB* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502, 71 S. Ct. 453, 456, 95 L. Ed. 479 (1951).

Supreme Court Rule 17.1 sets forth the following criteria to be used by this Court in ruling on a petition for a writ of certiorari:

(1) where a federal court of appeals has decided a federal question in a manner which conflicts with the decision of another circuit court of appeals;

(2) where a federal court of appeals has decided a federal question in conflict with a state court of last resort;
(3) where a federal court of appeals has decided an "important question of federal law" which has not been but should be decided by the United States Supreme Court;
(4) where a federal court of appeals has decided a federal question in a manner that conflicts with applicable decisions of the United States Supreme Court; or
(5) where a federal court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's supervisory power.

Supreme Court Rule 17.1(a), (c). The petitioner has failed to satisfy any of these criteria.

B. *The United States Court of Appeals for the First Circuit Correctly Ruled That the Respondent, Richard Howe, Did Not Act Under Color of State Law Where He Was Engaged as an Attorney in a Civil Action in State Court.*

The petitioner alleges that Howe deprived the petitioner of his civil rights and due process of law rights. Specifically, the petitioner points to Howe's conduct as the attorney for the Connollys in the state court action. The complaint alleges that after obtaining a judgment against the petitioner in state court, Howe moved the court to hold the petitioner in contempt of court for his failure to comply with the order of specific performance. Furthermore, the petitioner alleges that he complied with the order of specific performance under duress.

In order to state a claim under 42 U.S.C. § 1983, the complaint must allege that the plaintiff was deprived of a right secured to him under the Constitution or federal law, and that such deprivation occurred "under color of state law." *Flagg*

Bros., Inc. v. *Brooks*, 436 U.S. 149, 155-156, 98 S. Ct. 1729, 1733, 56 L. Ed.2d 185, 189 (1978). It is universally held, however, that a private attorney engaged as counsel in a civil action does not act "under color of state law" within the meaning of 42 U.S.C. § 1983. E.g., *Lindley* v. *Amoco Production Co.*, 639 F.2d 671, 673 (10th Cir. 1981); *Henderson* v. *Fisher*, 631 F.2d 1115, 1119 (3d Cir. 1980); *Briley* v. *California*, 564 F.2d 849, 855 (9th Cir. 1977); *Diffenbach* v. *Buckley*, 464 F. Supp. 670, 675 (D. N.H. 1979); see also *Briscoe* v. *Lahue*, 103 S. Ct. 1108, 1112-1113 n. 6 (1983); *Polk* v. *Dodson*, 454 U.S. 312, 324-325, 102 S. Ct. 445, 453, 70 L. Ed. 509 (1981).

Inasmuch as the petitioner predicates his claim against Howe upon Howe's conduct as counsel for the Connollys in the state court civil action, it is clear that the "state action" requirement of 42 U.S.C. § 1983 was not satisfied. The United States Court of Appeals for the First Circuit so held.

The petitioner has not shown that the First Circuit's decision conflicted with a decision of another circuit or of this Court. See Supreme Court Rule 17.1(a), (c). Moreover, the petitioner has not shown that the First Circuit decided an issue of federal law which merits resolution by this Court. See Supreme Court Rule 17.1(c). Finally, the petitioner has not shown that the First Circuit's decision was inconsistent with the accepted and usual course of judicial proceedings. See Supreme Court Rule 17.1(a). This case does not warrant the issuance of a writ of certiorari.

C. *The United States Court of Appeals for the First Circuit Correctly Ruled That the Petitioner's Claim of Dissatisfaction With the Outcome of the State Court Action Did Not Present a Federal Question.*

The petitioner also claims that he is dissatisfied with the outcome of the state court civil action. The First Circuit Court of Appeals held that this claim of dissatisfaction did not amount to a deprivation of federal rights. (A-11). Moreover, the

First Circuit Court of Appeals correctly held that 42 U.S.C. § 1983 was not intended to provide a vehicle for federal review of state court civil litigation. (App. 11). *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 415-417, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923). *Downing* v. *Arnold*, 461 F. Supp. 54, 57 (D. N.H. 1978). The First Circuit Court of Appeals correctly affirmed the judgment of dismissal.

The petitioner has failed to show that this case falls within any of the criteria delineated by Supreme Court Rule 17.1. In summary, the petitioner has failed to show that this case presents a question worthy of review by this Court.

Conclusion

It is respectfully submitted that the petitioner has failed to show that there are special and important reasons for granting the petition for a writ of certiorari. The decision of the First Circuit Court of Appeals did not involve a substantial question of federal law; nor has the Court of Appeals decided a federal question in a way which conflicts with applicable decisions of this Court or of another Circuit Court of Appeals. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

RICHARD HOWE,

By his attorneys,

PHILLIP M. DAVIS
JEAN M. KELLEY
KEVIN T. CREEDON
MORRISON, MAHONEY & MILLER
55 Court Street
Boston, MA 02108
(617) 523-7580

Appendix 1

ON APPEAL

VOL. 1 82 3398 11 8 2 3 440 1 NEAREST $1,000 J0115 25017 82-3398

PLAINTIFFS
ROMOLO E. CAPOBIANCO, INC.
ROMOLO E. CAPOBIANCO,

DEFENDANTS
JUDGES OF STATE COURT
ATTORNEY JOSEPH PRINCI and
ATTORNEY RICHARD HOWE
JAMES DANGORA (added 4/18/83)

CAUSE
(Cite the U.S. Civil Statute Under Which the Case Is Filed and Write a Brief Statement of Cause)

CIVIL RIGHTS CLOSED 10-13-83

ATTORNEYS

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Pro Se
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Billerica, MA 01821

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RAYMOND J. KENNEY, JR.
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227-3240

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Boston, MA, 02108
523-7580

CIVIL DOCKET ENTRIES
(DOCKET NO. 82-3398)

1982			
Nov.	8	01	Complaint filed.
1983			
Apr	4	02	Mtn for attachment of property in Tynsboro, MA, filed.
	4	03	P's mtn to amend complaint, filed. (c/s)
	4	04	Mtn for appt of cl by court for pltf, filed.
	18		TAURO, D.J. — re: #03, MTN ALLOWED. By the court, Mary L. Coughlin, D. Clerk. (cc/cl)
May	6	05	Ret of service wso by certified mail, filed.
	23	06	Mtn of deft, atty James Dangora, Jr., to dismiss, filed. (c/s)
	23	07	Memo of deft, Atty James Dangora, Jr., filed. (c/s)
	26	08	Pltf's objection to mtn to dismiss, filed.
June	2		ORDER OF REFERENCE TO MACISTRATE: #02, 04 and recommendation on #06 w/opposition #08. File referred to Magistrate Alexander.
	8	09	Mtn of D, Howe, to entend time whithin which to file responsive pleading and ans to P's complaint, filed. c/s
	10	10	Mtn of deft, Atty Joseph Princi, to dismiss, filed. (c/s)
	15		File referred to USM ALEXANDER re: #10 for REPORT & RECOMMENDATION.
	22	10	Objection to mtn to dismiss, filed.
Jul	1		TAURO, D.J. — re: #09, ALLOWED. By the court, Mary L. Coughlin, D. Clerk. (cc/cl)
	5	11	D's mtn to dismiss p';s complaint as it pertains to him & for entray of judgment, filed. (c/s)
	5	12	Brief in support of deft, mtn to dismiss p's complaint, filed. (c/s)

1983		
11		File referred to USM ALEXANDER, RE: #11 memo in support of #12.
18	12	Document by pltf, filed.
Aug. 8	13	P's mtn Romolo E. Capobianco to ext time w/in which to file responsive pldg &/or ans to d's mtn to dismiss p's amended & to enter judgment, filed. (c/s)
22	14	ALEXANDER, USM — ORDER, RE: #02, & 04, DENIED. FINDINGS & RECOMMENDATION RE: #11, Recommended it be allowed. ENTERED 8/22/83.
23		ALEXANDER, USM — re: #13, In light of my Order & Findings & Recommendation of 8/22/83, the mtn is hereby denied.
26	15	Notice of appeal, filed. (c/s)
Oct. 13	16	TAURO, D.J. — ORDER, ENTERED 10/13/83... RE: recommendation, adopted (cc/cl)
24	17	Notice of Appeal filed. cc/cl (FF Pd.)
Nov. 3		certified copy of docket & original pleadings forwarded to court of appeals.
9	18	Letter to clerk, dated 11/8/83, from Jean M. Kelley, appearance for d's, by Richard Howe, filed.

Appendix 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

ROMOLO E. CAPOBIANCO, INC.
ROMOLO E. CAPOBIANCO,
Both of Billerica, Massachusetts
PLAINTIFFS

v.

JUDGES OF STATE COURT
ATTORNEY JOSEPH PRINCI
ATTORNEY RICHARD HOWE

(Attorney Joseph Princi — Lecomte, Shea, Dangora and Barber)
(Attorney Richard Howe — Attorney — Lowell, MA)

COMPLAINT

I, Romolo E. Capobianco, come before you because I believe my civil rights, as well as, due process of the law has been denied. In addition, I also hold Joseph Princi, attorney, and Richard Howe, attorney and the State Courts responsible for my misrepresentation.

1. In August of 1977, I entered in an agreement with William and Donna Connolly of Tyngsboro, in which they signed a lease with an option to to buy with myself as Seller. After one year of leasing they had the option to buy the house if they desired and agreed to.
2. After one year they were *behind 3 months rent* and *did not come forward.*
3. After eighteen months they called and expressed a desire to purchase the above property. *I agreed with the stipulation that an appraisal of the the property be done.*

4. They in turn, brought court action against myself to sell under the original terms.
5. It was found in their behalf, but Attorney Joseph Princi *filed an appeal* and the appeal was in effect.
6. The Connollys's filed for contempt and when I went forward and asked for an *continuance or have an attorney present, this was denied.*
7. Finally, on November 5, 1982 with a bench warrant issued, I was forcably taken to Cambridge Court and order by Judge Donahue to sign the deed or go to jail. I tried to present to the Judge certain facts surrounding the case and also that I know of an appeal that was filed on my behalf.
8. The judge would not listen, nor did he allow a continuence or *give me the right to have an attorney present.*
9. It was made known to me that my attorney *had withdrawn my appeal without giving my any verbal or written notice.*
10. I also made known the fact that *my wife because of her entanglement with this litigation and working on my behalf suffered a mental breakdown and placed in a mental hospital. I have charge of three small children and that my business and right to make a living was the sole support for them. The judge refused to listen and under extreme duress and the demand that I be put to jail for 10 days unless signing over the deed, I agreed for fear of myself and my children.*

I, Romolo E. Capobianco, plead with you after reading the above factors with only for:

1. The Federal Court conduct a fair and impartial hearing so that all the important factors be brought forth.
2. That the Judge Donahue and Attorney Joseph Princi and Attorney Richard Howe be reprimanded for their actions.

3. For such other and further releif as the Court deems meet and just on my behalf.

ROMOLO E. CAPOBIANCO, INC.
ROMOLO E. CAPOBIANCO,
both 29 Andover Road
Billerica, MA
(s) ROMOLO E. CAPOBIANCO

Appendix 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 82-3398-T

ROMOLO E. CAPOBIANCO, INC. and
ROMOLO E. CAPOBIANCO,
Both of Billerica, Massachusetts
PLAINTIFFS

v.

JUDGES OF STATE COURTS,
ATTORNEY JOSEPH PRINCI and
ATTORNEY JAMES DANGORA, JR. and
ATTORNEY RICHARD HOWE
of Lowell, Massachusetts
DEFENDANTS

ORDER ON PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL AND MOTION FOR ATTACHMENT OF PROPERTY AND FINDINGS AND RECOMMENDATIONS ON DEFENDANTS' MOTIONS TO DISMISS

August 22, 1983

ALEXANDER, M.

Plaintiff's complaint, filed November 8, 1982, asserts claims against the judges of the state court and against attorneys Joseph Princi, James Dangora and Richard Howe. Plaintiff's claims arise from his dissatisfaction with the result of a civil lawsuit involving the sale of property. After review of the pleadings and memoranda filed, this Court recommends that the Motions to Dismiss be allowed.

It is well settled that judicial officers enjoy absolute immunity from suit. *Sullivan* v. *Kelleher*, 405 F.2d 486 (1st Cir. 1968). Furthermore, plaintiff's complaint does not allege the deprivation of a constitutionally protected right or interest which would serve as the basis for a claim under federal law. Plaintiff's statements of dissatisfaction with the results of the sale of his property, and his dissatisfaction with his attorney do not assert a cause of action upon which this Court can entertain jurisdiction. See, *Downing* v. *Arnold*, 461 F.Supp. 54 (D. N.H. 1978).

In that this Court recommends that the complaint be dismissed, plaintiff's Motions for Attachment of Property, and for Appointment of Counsel are denied.

(s) JOYCE ALEXANDER
United States Magistrate

Either party may file written objections to these findings and recommendations within ten days of receipt. Failure to file within ten days shall result in waiver of appeal. See *Park Motor Mart, Inc.* v. *Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980).

Appendix 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 82-3398-T

ROMOLO E. CAPOBIANCO, et al.
PLAINTIFFS

v.

RICHARD HOWE, et al.
DEFENDANTS.

ORDER
October 13, 1983

TAURO, D.J.

On August 22, 1983, the Magistrate issued a recommendation that the defendants' motions to dismiss be allowed and that the complaint be dismissed. After reviewing the Magistrate's report and recommendation, the objections thereto, and the record in this case, the court has decided to adopt the Magistrate's report and recommendation.[1]

It is so ORDERED.

(s) J. Tauro
United States District Judge

[1] In addition to the Magistrate's discussion, it is worthy of note that the § 1983 action against the attorneys must fail because participation in a state court proceeding does not make the attorneys' actions "under color of state law." *See Diffenbach* v. *Buckley*, 464 F.Supp. 670 (D. N.H. 1979).

Appendix 5

NOT FOR PUBLICATION

United States Court of Appeals
For the First Circuit

No. 83-1784

ROMOLO E. CAPOBIANCO, ET AL.,
PLAINTIFFS, APPELLANTS,

v.

RICHARD HOWE, ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[HON. JOSEPH L. TAURO, *U.S. District Judge*]

Before
CAMPBELL, *Chief Judge*,
COFFIN and BREYER, *Circuit Judges*.

Romolo E. Capobianco on brief, *pro se*.
Jean M. Kelley, *Kevin T. Creedon*, and *Morrison, Mahoney & Miller* on brief for Richard Howe.
Raymond J. Kenney, Jr., and *Martin, Magnuson, McCarthy & Kenney* on brief for appellees James Dangora and James Princi.

June 7, 1984

Per Curiam. This appeal is taken from the district court's dismissal of appellant's complaint for failure to state a claim upon which relief could be granted.

The complaint describes appellant's version of a real estate transaction and subsequent state court proceedings. It names two attorneys and unnamed state court judges as defendants.

As to one attorney, the complaint mentions him only in the caption. As to the other attorney it alleges that he filed an appeal in state court on appellant's behalf and later withdrew it without appellant's consent.[1] As to one state judge, the complaint alleges that he required appellant to surrender certain real estate or face contempt of court sanctions and that he did so with knowledge of the dilemma appellant faced and that he denied appellant a continuance and the right to counsel.

Though the complaint does not specifically describe the basis for federal jurisdiction, we assume that it was brought under 42 U.S.C. § 1983. As such it was properly dismissed.

The conduct of the attorneys cannot be described as "state action" and the conduct of the judge does not amount to a deprivation of federally protected rights.

Threatening a party with contempt sanctions for failure to abide by an order of the court is neither illegal nor a deprivation of federal rights. The denial of a continuance and counsel, if improper, were wrongs that could be remedied by an appeal in state court. 42 U.S.C. § 1983 was not intended to provide a federal review of state court actions. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923). The fact that the pursuit of appellate remedies would have placed appellant in a difficult personal dilemma does not constitute a deprivation of federal rights.

---

[1] The complaint was later amended to include a third attorney but the only allegation found in the district court record as to him is a claim that he conspired with the other lawyers to commit fraud. No state action is claimed.

In addition, the sole specific relief requested is a "reprimand" against the defendants. There is no statutory basis for such relief and without such authority the district court could not grant it. Monetary damages would not be available against the judge. See *Stump* v. *Sparkman*, 435 U.S. 369 (1978). Injunctive relief would be unavailing since the state proceedings had long-since concluded. Declaratory relief would involve voiding the state court action and would thus run afoul of *Rooker*.

We agree with the district court that there was no basis for relief and thus affirm its judgment.

Appendix 6

United States Court of Appeals
For the First Circuit

No. 83-1784

ROMOLO E. CAPOBIANCO, ET AL.,

PLAINTIFFS, APPELLANTS,

v.

RICHARD HOWE, ET AL.,

DEFENDANTS, APPELLEES.

Before

CAMPBELL, *Chief Judge*,

COFFIN and BREYER, *Circuit Judges*.

ORDER OF COURT

ENTERED: JULY 31, 1984

The petition for rehearing is denied.

By the Court:

FRANCIS P. SCIGLIANO, *Clerk*.

[cc: Messrs: Capobianco, Kenney and Ms. Kelley]